

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/723,924

Confirmation Number: 9787

Filing Date: 11/26/2003

Applicant(s): Erik J. Burckart, David B. Gilgen and Craig A. Lanzen

Entitled: EFFICIENT CONNECTION POOL VALIDATION

Examiner: Daniel C. Murray

Group Art Unit: 2443

Attorney Docket No.: RSW920030239US1 (131U)

REQUEST FOR REHEARING

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir,

This Request for Rehearing is submitted under 37 C.F.R. § 41.52 in response to the Decision on Appeal dated November 12, 2010 (hereinafter the Decision).

This Request for Rehearing is timely filed within the two month time period for reply set forth under 37 C.F.R. § 41.52(a)(1).

Appellants respectfully submits that in the Decision, the Honorable Board either misapprehended and/or overlooked certain arguments presented by Appellants in the Appeal Brief of December 7, 2007, and in the Reply Brief of July 29, 2008. Appellants will specifically identify these particular points below.

REMARKS

Decisions of the PTO tribunals are reviewed in accordance with the standards of the Administrative Procedure Act. See Dickinson v. Zurko, 527 U.S. 150, 165 (1999) (applying the Administrative Procedure Act, 5 U.S.C. § 706, to appeals of PTO rulings). Thus the Board's factual findings are reviewed to determine whether they are unsupported by substantial evidence, and the Board's legal conclusions are reviewed for correctness in law. See In re Gartside, 203 F.3d 1305, 1312 (Fed. Cir. 2000).

The Decision at page 5 provides for a finding of fact of the claim construction of an “idle connection” as a connection that has no requests pending while the connection is open and no requests experiencing processing by a processing resource servicing the connection. The Decision at page 5 provides for an additional finding of fact that in managing a pool of idle connections, those idle connections should be validated to ensure the idle connections remain valid and usable on demand. In the Analysis portion of the Decision, the Honorable Board yet further accepts Examiner’s claim construction of “validate” as determining that a connection is usable based upon the teachings of page 5 of Appellants’ specification.

Of import, the word “valid” means “appropriate to an end in view”. In the context of computing, a valid connection is a communicative link that when used, permits a transmission of data thereover from one end point of the link to another. Conversely, an invalid connection is a communicative link that when used, does not permit a transmission of a data thereover from one end point of the link to another. Of import, a “valid” connection may not be usable for many reasons, including access control, prior use, and the like. Further, an invalid connection inherently is not usable. However, a non-usable connection is not necessarily an invalid connection as the foregoing logic would dictate.

Extending the rationale set forth above, an idle connection can be valid and usable, valid but unusable (for other reasons) or invalid and thus unusable. However, the fact that a connection is idle does not guarantee that the connection is invalid. Testing connections determine idleness as in the case of the Chintalapati reference, thus, bears no relationship to testing idle connections for validity as in the case of Appellants’ claims.

If the Honorable Board were to accept the foregoing logic as true, then the claim construction of “valid connection” as “usable connection” would be an improper claim construction and further would render Appellants’ own definition in page 5 of the specification redundant and superfluous in as much as Appellants

have inferred a valid connection to be both a valid AND usable connection. Were the Honorable Board to adopt Appellants' proffered claim construction, the Honorable Board would have concluded that the misconstruction of "valid connection" by the Examiner as merely an "idle connection" necessarily would have resulted in the failure of Examiner to properly compare "valid connection" to the teachings of Batra which include only testing a connection for idleness and not validity.

For the reasons set forth in the Appeal Brief and in the Reply Brief, Appellants respectfully solicits the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. § 103. To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: January 12, 2011

Respectfully submitted,

/Steven M. Greenberg/

Steven M. Greenberg

Registration No. 44,725

Phone: (561) 922-3845

CUSTOMER NUMBER 46320